THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No. 8197 OF 2005

% 30-03-2007

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Qazi Habeeb Abdullah Rifai

…Petitioner

and

$ The Principal Secretary to Government,
Minorities Welfare Department, Govt. of A.P.,
Secretariat, Hyderabad & another

…Respondents

! COUNSEL FOR PETITIONER: Sri K.Pratap Reddy, Senior Counsel

^ COUNSEL FOR RESPONDENTS: Sri A.M.Qureshi
G.P. for Minorities.

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Dated: 30th March 2007

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O R D E R:

The petitioner was appointed as a Kazi, for performing the marriages of Muslims (Shafayee sect) at Hyderabad, by the Government of A.P., the 1st respondent herein, through orders in G.O.Ms.No.606, Revenue (Wakf) Department, dated 27.6.1990. This appointment was made under the provisions of the Kazis Act, 1880 (for short "the Act). Through its orders in G.O.Ms.No.757, dated 18.8.1990, the petitioner was permitted to perform the marriages of Arabs also, and the original order of appointment was accordingly modified.

The petitioner appointed a person by name Ahmed Sharif, as his Naib Kazi. The latter performed nikha of a woman, by name Haseena Begum, with one, Mr.Jaffar Yakub Hussan Alzarouni, said to be an Arab Shaik. The woman submitted a complaint in Chandrayanagutta Police Station, alleging harassment in the hands of her husband. Soon thereafter, a news item appeared in the local dailies, on 27.5.2004.

The 1st respondent called for a report, from the A.P. Wakf Board, the 2nd respondent herein, on the subject, and through orders in G.O.Rt.No.240, dated 4.6.2004, it suspended the appointment of the petitioner as Kazi. This was followed by an enquiry by the 2nd respondent, against the petitioner, and a report dated 14.9.2004 was submitted. Taking the same, into account, the 1st respondent issued orders in G.O.Ms.No.11, Minorities Welfare (Wakf-II) Department, dated 2.4.2005, removing the petitioner from the post of Kazi. The petitioner challenges the same.

The petitioner contends that as a Kazi, his duty is only to verify whether the parties to the marriage have attained the stipulated age, and whether there exists the offer and acceptance, free from any external factors. He contends that the bride did not complain of any threat, coercion, or her displeasure for the marriage, and that her complaint came to be made, only on account of the alleged harassment made by her husband. He contends that the Kazi has absolutely no role to play in such matters, and there was no basis for the impugned order. He complains of violation of principles of natural justice and defects in the enquiry.

The 1st respondent filed a counter affidavit, stating that the petitioner ought to have ensured that the institution of marriage is not misused by the parties, and that on account of his negligence, a marriage between a girl of 19 years and an Arab Shaik of 73 years, took place. It is also stated that the petitioner failed to ascertain the correct information, as well as the status of the parties, particularly that of the bridegroom, at the time of marriage. The allegations as to the procedural lapses are denied.

The 2nd respondent filed a separate counter affidavit. Apart from the points urged by the 1st respondent, the 2nd respondent stated that notwithstanding the limited role to be played by Kazi, the petitioner ought to have been careful, in ascertaining the ages of the parties, to a marriage. It is stated that in the course of enquiry, several instances, of the petitioner arranging for marriages between Arab Shaiks and innocent girls in the city of Hyderabad, have come to light. It is also alleged that the petitioner and his Naibs have provided facilities to the Arab Shaiks for their stay and marriages, by collecting huge amounts. Various details of enquiry conducted against the petitioner that resulted in submission of enquiry report, dated 14.9.2004, are also furnished. It is pleaded that no procedural irregularity has taken place.

Sri K.Pratap Reddy, learned Senior Counsel, appearing for the petitioner, submits that the proceedings initiated by the respondents, against the petitioner, are without any basis and are contrary to the provisions of law. He contends that no specific charge was framed against the petitioner, and the respondents were carried away by certain reports in the newspapers and they did not even care to verify the truth, or legality of such allegations. Learned Senior Counsel submits that the appointing authority i.e. the 1st respondent, did not frame any charges, and the enquiry conducted by the 2nd respondent was not on the basis of any specific charges. He points out that even according to the enquiry report, the persons who are said to have complained against the petitioner, did not turn up in the enquiry, and despite the same, findings were recorded against the petitioner, and the impugned order was passed, in violation of settled principles of law.

Learned Government Pleader for Minorities Welfare and learned Standing Counsel for the Wakf Board, submit that the petitioner and his Naibs failed to take necessary precautions, while performing the marriage in question, particularly, when the bridegroom was a foreigner, aged more than 70 years. According to them, the Kazi occupies an important place in the Muslim Law and that the petitioner had misused his position, for monetary gains. By referring to the proceedings that have taken place from time to time, they contend that the requirement of an independent and impartial enquiry and the principles of natural justice were complied with.

The petitioner challenges the orders of the 1st respondent, terminating his appointment as Kazi. The allegation against the petitioner is that he failed to discharge his duties and functions as Kazi, properly. Specific reference is made to a marriage between a woman, by name Haseena Begum, and an Arab Shaik, by name Jaffar Yakub Hussan Alzarouni. The said marriage was performed by a Naib Kazi, by name Ahmed Shareef, appointed by the petitioner. A Kazi is responsible for the acts and omissions on the part of the Naib Kazi, appointed by him. The petitioner does not dispute this legal position.

The marriage in question was performed on 7.5.2004. The marriage certificate issued by the Naib Kazi discloses that the bride was accompanied by her father and he signed as “vakil” in the marriage register. Her uncle, by name Syed Hasham, and her real cousin, by name Syed Ghouse, signed as two witnesses. The age of the bride was entered as 22 years. In the column relating to the particulars of the bridegroom, the date of birth was shown as 10.2.1931.

Few weeks after the marriage, the bride submitted a complaint

before Chandrayanagutta Police Station, under Section 498-A IPC. She alleged that after the marriage, her husband started harassing her for dowry. It was also alleged that the bridegroom is in the habit of marrying innocent women and giving talaq shortly thereafter. Reports appeared in the newspapers on 27.5.2004, about the practice of the aged Arab Shaiks marrying young muslim girls from Hyderabad, and the marriage in question was referred to, extensively. This gave rise to suspension of the petitioner. Thereafter, an enquiry was held, and the appointment of petitioner as Kazi, was terminated.

In this context, two questions arise for consideration, *viz*., 1) the scope of powers and functions of a Kazi, in the context of marriage between muslims; and 2) compliance with the procedural requirements, while terminating the appointment of the petitioner.

The institution of Kazi, at one point of time, occupied a very pivotal position, in the administration of Muslim Law. He was conferred with adjudicatory and administrative powers, and endowed with religious duties and functions. With the advent of British rule of India, the adjudicatory powers of Kazi came to be restricted, and appointment of Kazis was provided for, under the Kazis Act 1880. The following paragraph of the statement of objects and reasons of that Act, would summarise the nature of the powers of a Kazi, that existed earlier thereto.

> "Under the Muhammadan Law the Kazi was chiefly a Judicial Officer. His principal powers and duties are stated at some length in the Hedaya, Book xx. He was appointed by the State, and may be said to have corresponded to our Judge or Magistrate. In addition, however, to his functions under the Muhammadan Law, the Kazi in this country, before the advent of British rule, appears to have performed certain other duties, partly of a secular and partly of a religious nature. The principal of these seems to have been preparing,

attesting and registering deeds of transfer of property, celebrating marriages and performing other rites and ceremonies. It is not apparent that any of these duties were incumbent on the Kazi as such. It is probable that the customary performance of them arose rather from his being a public functionary and one known by his official position to be acquainted with the law, than from his having, as Kazi, a greater claim to perform them than any one else.

Such was the position of the Kazi in this country under Native Government. On the introduction of the British rule, Judges and Magistrates took the place of Kazis and the Kazi in his judicial capacity disappeared; but the British Government, though no longer recognizing the judicial functions of the Kazi, did not abolish the office. By certain Regulations passed from time to time, the appointment of Kazi-ul-Kuzaat and Kazis by the State was provided for, and the performance of their non-judicial duties was recognised by law. In the case of Bengal, indeed, certain additional duties were imposed on them. The duties of the Kazi under these Regulations comprised some or all of the following, *viz*-

(1) preparing and attesting deeds of transfer and other law-papers;
(2) celebrating marriages and presiding at divorces;
(3) performing various rites and ceremonies;
(4) superintending the sale of distrained property and paying charitable and other pensions and allowances."

The relevance of the institution of Kazi has been substantially restricted, and for all practical purposes, it is confined to the celebration of marriages, and performance of related rites and ceremonies. It is evident from the preamble of the Act, which, *inter alia,* mentions as under:

"…and whereas by the usage of the Mahommedan community in some parts of India the presence of *kazis* appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of *kazi*; It is hereby enacted as follows:"

In ***KAZI MD.ABBAS ALI v. A.P. WAKF BOARD***[1], this court held that a Kazi, appointed under the Act, holds a position of considerable importance, and he has to discharge not only secular, but also religious duties. However, when it comes to the question of performance of the marriage, the duties of the kazis are restricted, mostly to verify whether the parties to the marriage are of the prescribed age, particularly of the bride, and entering the necessary particulars of the bride and bridegroom in the registers to be maintained by him, and ensure that there exists free consent. Though both the parties of the marriage are required to be accompanied by their respective parents, relations or acquaintances, the verification, as to existence of free consent, particularly from the bride by the Kazi, independently, assumes significance, in view of the fact that the marriage under Muslim Law is more a contract, than a ceremony.

One of the important particulars to be entered by the Kazi in the registers maintained by him is about the marital status of the bridegroom. If the bridegroom has four wives, by the time he intends to contract another marriage, the proposed marriage stands prohibited. It is the duty of the Kazi to ensure that there does not exist any surviving marriage with the bride and that the bridegroom does not have more wives than three, at the time of the proposed marriage. Once a Kazi is satisfied that the parties to the marriage have attained the age of majority, the consent of the bride for the marriage is free and that the bridegroom does not have more wives than three, he has no option but to perform the rituals of marriage. Any attempt by him, to ascertain any further information, or to refuse to perform the marriage, on any other ground, is prone to impinge upon the rights of the parties to the marriage, and would be in excess of the powers and duties ascribed to

him, under law. Another important aspect of the matter is that except in certain cases, such as, to express his view about the validity or otherwise of the dissolution of the marriage brought about the parties themselves, the kazi has absolutely no role to play, once the marriage is performed. He cannot act as an arbitrator or adjudicator, in any disputes that arise between the parties, after their marriage is performed.

In the instant case, the bride, by name Haseena Begum, did not complain of any lapse on the part of the Kazi, in the matter of ascertaining the ages or factors, if any, influencing her consent for the marriage. Her only complaint was that few days subsequent to the marriage, her husband started harassing her for additional dowry. Even if the allegation is taken as true, there is hardly anything, which the petitioner or his naib were expected to do about it. Therefore, the grounds, on which the proceedings were initiated against the petitioner, are totally unrelated to the functions of a kazi.

The authority, which appoints a kazi, is the Government. Whether by operation of provisions of General Clauses Act, or on application of the general principles of law, it becomes clear that it is only the Government that can initiate enquiry and pass orders against the petitioner. The enquiry, in the instant case, was conducted by the Chief Executive Officer (CEO) of A.P. Wakf Board. The Act does not assign any role to an authority under the Wakf Act. Assuming that the CEO was appointed by the Government and that it is otherwise permissible, it needs to be verified as to whether he has followed the correct procedure.

Neither the Government, nor the Enquiry Officer, framed any specific charges against the petitioner. The latter issued a show-

cause notice, dated 17.6.2004 to the petitioner. In that, the petitioner was required to produce the concerned records, within three days from the date of receipt of the notice. On receipt of the same, the petitioner submitted a representation, stating that he was placed under suspension, through G.O.Rt.No.240, dated 4.6.2004, and thereupon, he submitted relevant records as well as explanation to it. It is also stated that the allegations against him that he failed to produce the records, is not correct. The other notices issued to the petitioner, were those relating to the intimation of the dates of enquiry. In his report, dated 14.9.2004, the Enquiry Officer, referred to the notice dated 17.6.2004. Not a single witness was examined by the Enquiry Officer.

The scope of the enquiry and the various steps involved in the matter, were summed up by the Enquiry Officer in paragraphs 9 to 12 of the report, as under:

> "9. In the present case the allegations are that after the marriage with Haseena Begum, the said Arab Shaik deserted her and married another girl and he was harassing her for dowry. So on a complaint lodged with the police at Chandrayangutta Police Station, a case was registered in Crime No.113/2004 under Section 498(A), 109 IPC, against the said Arab Shaik.
>
> 10. The Chief Executive Officer on receipt of the explanation of the delinquent Kazi, directed him to submit the marriage certificate records pertaining to his Qazath circle. In the show-cause notice itself he was directed to produce the said records. But he took time to produce the same. After reminders, finally he produced the records of marriage certificate on 6.7.2004.
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> 11. It is submitted that in the meanwhile the Inspector of Police, Chandrayangutta was requested to furnish copies of documents said to have been seized during investigation in the criminal case registered against the said Arab Shaik. Btu the Police authorities did not furnish any such records. Finally, it is learnt that the said Haseena Begum has

withdrawn her criminal complaint against the said Arab Shaik in the concerned Magistrate and the case is also ended in acquittal.

12. It is submitted that on receipt of the explanation and records submitted by the said delinquent Kazi, summons were taken out against Haseena Begum, her father Sk.Mahaboob and two witnesses who were present at the time of marriage of Haseena Begum. But they refused to receive the same and therefore again summons were sent by registered post with acknowledgment due. This time also they refused to receive the registered post letters."

With the developments indicated in the above paragraphs, the proceedings ought to have been dropped. However, he has taken up himself, the task of verification of several marriages performed by the petitioner and his Naib Kazi. He intended to verify the genuinety of marriages identified by him, and issued notices to the parties. Either they have declined to receive notices, or they did not turn up. The ultimate findings of the Enquiry Officer are as under:

"26. The statement showing the marriages performed by the Qazath office of the delinquent Kazi is submitted to show the disparity of ages between the bride and bridegroom to draw an inference that the delinquent Kazi and his Naib Kazis are indulging in such activities. More over, taking advantage of the sole monopoly of the delinquent as Kazi for performance of marriages of Shafai Uroob, the delinquent Kazi is performing the marriages of young girls with aged Arab Shaiks apparently for unlawful gain.

Findings:- Considering the overall situations and circumstances enumerated above, it is found that there is a prima facie case against the Kazi and the charges are held proved. Further, the activities of the delinquent Kazi amounts to explanation of the poor Muslim girls and proves that the delinquent is guilty of lapses stated to have been committed by him. Therefore, his continuance as Kazi for Shafai Uroob further will ruin the lives of may more poor Muslim girls. In view of the aforesaid submissions, it is recommended that the services of Sadar Kazi namely Qazi Habeeb Abdullah Refai

may be terminated and work may be distributed among the other Kazis of the respective areas."

On the basis of the report of the Enquiry Officer, the 1st issued a show-cause notice to the petitioner and an explanation was submitted, thereto. He requested the 1st respondent, to supply the material relied upon by the Enquiry Officer, in coming to the conclusion. The concluding portion of the G.O.Ms.No.11, dated 2.4.2005 reads as under:

> "10. In reply to Govt.Memo dated 29.12.2004, Sri Qazi Habeeb Abdullah Rifai (under susp4ension) in his application dated 31.12.2004, has requested the Govt. again to furnish all the material relied upon by the Enquiry Officer for coming to a conclusion within (7) days and also requested to extend the time by (3) more weeks for giving reply to the show cause notice dated 6.12.2004 issued by the Government.
>
> 11. From the above mentioned fact, it is clear that instead of submitting his explanation the delinquent Kazi is asking to furnish the material to submit his explanation though all the relevant facts were earlier mentioned in the Show Cause Notice duly supplying a copy of Enquiry Officer's report. The delinquent Kazi is writing to the Government time and again to furnish some information/material with an intention to delay the action to be taken against him. Other than this reason, it is evident that he has no explanation to offer against the charges and hence the charges framed against him are held proved.
>
> 12. Therefore, in exercise of the powers conferred under Section 2 of the Khazis Act, 1880 (ACT XII of 1880) the Govt. of A.P. hereby removes Sri Habeeb Abdullah Rifai from the post of Kazi, Shafai Uroob of Hyderabad."

From the above, it is clear that several procedural lapses were committed by the 1st respondent, as well as the Enquiry Officer. None of them were clear as to the allegations against the petitioner. The

woman, whose marriage the petitioner performed, did not submit any complaint, alleging any lapses on the part of the petitioner. She did not figure as a witness. The record discloses that she has withdrawn the criminal complaint filed by her in the police station. With that, the very basis for initiation of proceedings, against the petitioner, disappeared. The Enquiry Officer did not confine himself to any aspect, and proceeded according to whims and fancies. He collected lot of material, behind the back of the petitioner, and not a single witness was examined. When the petitioner requested the 1st respondent to furnish material relied upon by the Enquiry Officer, he took exception to his request, and had chosen to remove the petitioner from the post of Kazi.

From the above, it is clear that the petitioner did not violate any duties and functions assigned to him as Kazi, and that the G.O.Rt.No.11, dated 2.4.2005, removing him from the post of Kazi, is illegal and arbitrary, and violative of principles of natural justice.

The writ petition is accordingly allowed. There shall be no order as to costs.

(**L.NARASIMHA REDDY, J)**

Dt: 30th March 2007

Note: L.R.Copies be marked.
(B/o)
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[1] 1978 (2) ALT 295